

REMARKS

Claims 1-14 and 16-51 are currently pending in the application. By this Amendment, no claims have been amended. No new matter has been added.

STATEMENT OF SUBSTANCE OF INTERVIEW

Applicants' undersigned representative had a telephonic interview with the Examiner on August 12, 2009. In the interview, why the declaration was found to be ineffective was explained. The Examiner explained that he interprets the bug files as being fatal to the program. Thus, exhibit F may not have work as intended. The Examiner suggested in order to overcome this, the response should clearly point to where in the declaration and evidence shows that the "bugs" listed in exhibit F are not critical or fatal bugs to the claimed invention.

DECLARATION IS EFFECTIVE TO OVERCOME ANDERSON

In the Office action, the declaration was found to be ineffective allegedly because the test results in exhibit F do not work as intended because the test scripts show bugs. This is not true as clearly explained in the declaration from at least items 46-52.

First, the claimed invention worked for its intended purpose. As declared in items 46-48, the tests related to the invention include the initials "aq" and success is shown by the suffix ".suc". For example, tkaqbdq2.suc as shown in item 48 shows the success of the test having features of the invention. Therefore, as shown in Exhibit F, the tests relating to the claimed invention were successful (also see item 46).

Second, the "bugs" are not fatal because what the Office action labeled as "bugs" are not bugs but are transaction of bug fixes and are for features not of the claimed invention. As declared in items 49-51, the listing of transactions (not results as incorrectly presumed by the Office action), which is the part of Exhibit F after the section that listed all the tests were successful, show all the changes made to the database for that particular run. For example, as stated in item 51, transaction named ykunitom_bug-704908_1 shows a transaction for a bug fix on a feature not related to the invention.

In sum, as declared in item 52, “Exhibit F shows that successful tests were performed on the subject invention. All the features relating to the invention ran successfully as shown by tkaq*.suc. Moreover, all the transactions of Exhibit F referencing bugs are bug fixes unrelated to the subject invention.”

Therefore, the declaration clearly declared, as shown at least in items 46-52, that the tests were successful and worked as intended purpose. Moreover, the reasoning of the Office action is incorrect because the transactions in Exhibit F were not fatal bugs. Thus, the declaration is effective to overcome the Anderson reference.

CLAIM REJECTIONS -35 USC 101

Claims 13-14, 16-30 and 38-44 are rejected under 35 USC 101, as being allegedly directed to non-statutory subject matter. Applicants respectfully disagree. Claims 13 and 21 are not software per se. Specifically, claims 13 and 21 are system claims that explicitly claim a system and consumers. The system and consumers as described in the specification as well as at least in figures 18A and 18B are hardware and not software. Thus, these claims comprise the system and consumers which are not software per se. Therefore, the system claims comprise system and consumers and are not directed to non-statutory subject matter.

CLAIM REJECTIONS -35 USC 112

Claims 38-44 are rejected under 35 USC 112, second paragraph, as being allegedly indefinite. Applicants respectfully disagree. The specification clearly supports for claims 38-44. Some embodiments of these claims are shown at least in Fig. 18A and 18B and page 52, lines 1-2. Thus, Applicants respectfully request this rejection to be withdrawn.

CLAIM REJECTIONS -35 USC 103

All pending claims have been rejected under 35 USC 103(a) as being unpatentable over Anderson (USP 6,442,600) in view of Smith et al. (USP 6,282,564).

The Anderson reference was filed on January 15, 1999 and was issued on August 27, 2002. Therefore, this reference is being cited as 102(e) art and is thus eligible to be overcome based at least in part upon an affidavit or declaration from an inventor pursuant to 37 CFR 1.131. See MPEP Section 715.

A Declaration pursuant to 37 CFR 1.131 was previously submitted on February 25, 2009 stated that the invention was conceived and reduced to practice prior to the date(s) of the cited references. The Office Action asserted that the Declaration was ineffective for only allegedly that the bugs in the test scripts demonstrate the incompleteness of the invention.

Without acquiescence in the conclusion of the Office Action, and to expedite allowance, Applicants hereby request that the Office review the revised 37 CFR 1.131 Declaration which specifically show that the claimed invention actually existed and worked for its intended purpose prior to the date of the cited Anderson reference. The Declaration explicitly describes facts which show that the claimed subject matter successfully worked for its intended purpose and the mention of the bugs are actually bug fixes and are unrelated to the claimed subject matter as declared in items 46-52. Thus, the subject matter of the application was conceived and reduced to practice prior to the date of the Anderson reference.

For at least this reason, it is respectfully submitted that Anderson cannot be used to anticipate or render obvious the claimed subject matter. Therefore, the combination of Anderson and Smith cannot be used to render the pending claims obvious. Moreover, it is respectfully noted that Applicants do not acquiesce in the basis of the rejection, e.g., because even if a combination is made, the resulting combination does not include all elements of the claimed invention.

CONCLUSION

Based on the foregoing, all claims are believed allowable, and an allowance of the claims is respectfully requested. If the Examiner has any questions or comments, the Examiner is respectfully requested to contact the undersigned at the number listed below.

To the extent that any arguments and disclaimers were presented to distinguish prior art, or for other reasons substantially related to patentability, during the prosecution of any and all parent and related application(s)/patent(s), Applicant(s) hereby explicitly retracts and rescinds any and all such arguments and disclaimers, and respectfully requests that the Examiner re-visit the prior art that such arguments and disclaimers were made to avoid.

The Commissioner is authorized to charge any fees due in connection with the filing of this document to Vista IP Law Group's Deposit Account No. 50-1105, referencing billing number OID-1998-15-01. The Commissioner is authorized to credit any overpayment or to charge any underpayment to Vista IP Law Group's Deposit Account No. 50-1105, referencing billing number OID-1998-15-01.

Respectfully submitted,

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Vista IP Law Group LLP
1885 Lundy Avenue,
Suite 108
San Jose, CA 95131
Telephone: (408) 321-8663

By: /Jasper Kwoh/
Jasper Kwoh
Registration No. 54,921
for
Peter C. Mei
Registration No. 39,768